

AMENDMENTS TO LB 561

Introduced by Langemeier, 23.

1 1. Strike original section 2 and insert the following new
2 sections:

3 Sec. 2. Section 70-1903, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:

5 70-1903 For purposes of the Rural Community-Based Energy
6 Development Act:

7 (1) C-BED project or community-based energy development
8 project means a new wind energy project that:

9 (a) Has an ownership structure as follows:

10 (i) For a C-BED project that consists of more than
11 two turbines, has one or more qualified owners with no single
12 individual qualified owner owning directly or indirectly more than
13 fifteen percent of the project and with at least thirty-three
14 percent of the gross power purchase agreement payments flowing to
15 the qualified owner or owners or local community; or

16 (ii) For a C-BED project that consists of one or
17 two turbines, has one or more qualified owners with at least
18 thirty-three percent of the gross power purchase agreement payments
19 flowing to a qualified owner or owners or local community; and

20 (b) Has a resolution of support adopted:

21 (i) By the county board of each county in which the C-BED
22 project is to be located; or

23 (ii) By the tribal council for a C-BED project located

1 within the boundaries of an Indian reservation;

2 (2) Debt financing payments means principal, interest,
3 and other financing costs paid by the C-BED project company to
4 one or more third-party financial institutions for the financing or
5 refinancing of the construction of a C-BED project;

6 ~~(2)~~ (3) Electric utility means an electric supplier that:

7 (a) Owns more than one hundred miles of
8 one-hundred-fifteen-kilovolt or larger transmission lines in the
9 State of Nebraska;

10 (b) Owns more than two hundred megawatts of electric
11 generating facilities; and

12 (c) Has the obligation to directly serve more than two
13 hundred megawatts of wholesale or retail electric load in the State
14 of Nebraska; and

15 (4) Gross power purchase agreement payments means a total
16 amount of payments during the life of the agreement less debt
17 financing payments; and

18 ~~(3)~~ (5) Qualified owner means:

19 (a) A Nebraska resident;

20 (b) A limited liability company that is organized under
21 the Limited Liability Company Act and that is made up of members
22 who are Nebraska residents;

23 (c) A Nebraska nonprofit corporation organized under the
24 Nebraska Nonprofit Corporation Act;

25 (d) An electric supplier as defined in section
26 70-1001.01, except that ownership in a single C-BED project is
27 limited to no more than:

1 (i) Fifteen percent either directly or indirectly by a
2 single electric supplier; and

3 (ii) A combined total of twenty-five percent ownership
4 either directly or indirectly by multiple electric suppliers; or

5 (e) A tribal council.

6 Sec. 3. Section 70-1904, Revised Statutes Cumulative
7 Supplement, 2008, is amended to read:

8 70-1904 (1) A C-BED project developer and an electric
9 utility are authorized to negotiate in good faith mutually
10 agreeable power purchase agreement terms.

11 (2) A qualified owner or any combination of qualified
12 owners may develop a C-BED project with an equity partner that is
13 not a qualified owner, if not more than sixty-seven percent of the
14 gross power purchase agreement payments flow to the nonqualified
15 owners.

16 (3) Except for an inherited interest, the transfer of
17 a C-BED project to any person other than a qualified owner is
18 prohibited during the initial ten years of the power purchase
19 agreement.

20 (4) A C-BED project that is operating under a power
21 purchase agreement is not eligible for any applicable net energy
22 billing.

23 (5) A C-BED project shall be subject to approval by the
24 Nebraska Power Review Board in accordance with Chapter 70, article
25 10, or shall receive certification as a qualifying facility in
26 accordance with the federal Public Utility Regulatory Policies Act
27 of 1978, 16 U.S.C. 2601 et seq., with written notice of such

1 certification provided to the Nebraska Power Review Board.

2 (6) A C-BED project developer shall notify the electric
3 utility that has a power purchase agreement with a C-BED project if
4 there is a change in project ownership which makes the project no
5 longer eligible as a C-BED project.

6 Sec. 4. Section 77-2704.57, Revised Statutes Cumulative
7 Supplement, 2008, is amended to read:

8 77-2704.57 (1) Sales and use tax shall not be imposed
9 on the gross receipts from the sale, lease, or rental of personal
10 property for use in a C-BED project or community-based energy
11 development project. This exemption shall be conditioned upon
12 filing requirements for the exemption as imposed by the Tax
13 Commissioner. The requirements imposed by the Tax Commissioner
14 shall be related to ensuring that the property purchased qualifies
15 for the exemption. The Tax Commissioner may require the filing
16 of the documents showing compliance with section 70-1907, the
17 organization of the project, the distribution of the payments,
18 the power purchase agreements, the project pro forma, articles of
19 incorporation, operating agreements, and any amendments or changes
20 to these documents during the life of the power purchase agreement.

21 (2) The Tax Commissioner shall notify an electric utility
22 that has a power purchase agreement with a C-BED project if
23 there is a change in project ownership which makes the project no
24 longer eligible as a C-BED project. Purchase of a C-BED project
25 by an electric utility prior to the end of the power purchase
26 agreement disqualifies the C-BED project for the exemption, but the
27 Department of Revenue may not recover the amount of the sales and

1 use tax that was not paid by the project prior to the purchase.

2 (3) For purposes of this section:

3 (a) C-BED project or community-based energy development
4 project means a new wind energy project that:

5 (i) Has an ownership structure as follows:

6 (A) For a C-BED project that consists of more than
7 two turbines, has one or more qualified owners with no single
8 individual qualified owner owning directly or indirectly more than
9 fifteen percent of the project and with at least thirty-three
10 percent of the gross power purchase agreement payments flowing to
11 the qualified owner or owners or local community; or

12 (B) For a C-BED project that consists of one or
13 two turbines, has one or more qualified owners with at least
14 thirty-three percent of the gross power purchase agreement payments
15 flowing to a qualified owner or owners or local community; and

16 (ii) Has a resolution of support adopted:

17 (A) By the county board of each county in which the C-BED
18 project is to be located; or

19 (B) By the tribal council for a C-BED project located
20 within the boundaries of an Indian reservation;

21 (b) New wind energy project means any tangible
22 personal property incorporated into the manufacture, installation,
23 construction, repair, or replacement of a device, such as a wind
24 charger, windmill, or wind turbine, which is used to convert wind
25 energy to electrical energy or for the transmission of electricity
26 to the purchaser; and

27 (c) Qualified owner means:

1 (i) A Nebraska resident;

2 (ii) A limited liability company that is organized under
3 the Limited Liability Company Act and that is entirely made up of
4 members who are Nebraska residents;

5 (iii) A Nebraska nonprofit corporation organized under
6 the Nebraska Nonprofit Corporation Act;

7 (iv) An electric supplier as defined in section
8 70-1001.01, except that ownership in a single C-BED project is
9 limited to no more than:

10 (A) Fifteen percent either directly or indirectly by a
11 single electric supplier; and

12 (B) A combined total of twenty-five percent ownership
13 either directly or indirectly by multiple electric suppliers; or

14 (v) A tribal council.

15 (4) ~~Power~~ Gross power purchase agreement payments are the
16 total amount of payments during the life of the agreement less
17 debt financing payments. For purposes of this subsection, debt
18 financing payments means principal, interest, and other financing
19 costs paid by the qualified owners to one or more third-party
20 financial institutions for the financing or refinancing of the
21 construction of the C-BED project. For the ~~purposes~~ purpose of
22 determining eligibility of the project, an estimate of the payments
23 and their recipients shall be used.

24 (5) Payments to the local community include, but are not
25 limited to, lease payments to property owners on whose property a
26 turbine is located, wind energy easement payments, and real and
27 personal property tax receipts from the C-BED project.

1 (6) The Department of Revenue may examine the actual
2 payments and the distribution of the payments to determine if the
3 projected distributions were met. If the payment distributions to
4 qualified owners do not meet the requirements of this section, the
5 department may recover the amount of the sales or use tax that was
6 not paid by the project at any time up until the end of three years
7 after the end of the power purchase agreement.

8 (7) At any time prior to the end of the power purchase
9 agreements, the project may voluntarily surrender the exemption
10 granted by the Tax Commissioner and pay the amount of sales and use
11 tax that would have otherwise have been due.

12 (8) The amount of the tax due under either subsection
13 (6) or (7) of this section shall be increased by interest at the
14 rate specified in section 45-104.02, as such rate may from time to
15 time be adjusted, from the date the tax would have been due if no
16 exemption was granted until the date paid.

17 Sec. 5. Original section 70-670, Reissue Revised Statutes
18 of Nebraska, and sections 70-1903, 70-1904, and 77-2704.57, Revised
19 Statutes Cumulative Supplement, 2008, are repealed.